

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

**Second Addendum to the Final Statement of Reasons for Rulemaking for
Emissions Standards and Test Procedures for New 2001 and Later Model Year
Spark-Ignition Marine Engines**

Public Hearing Date: **December 10, 1998**
Agenda Item No.: **98-14-2**

I. Background

On October 22, 1999, the Air Resources Board (ARB) submitted a Final Regulation Order, adopting sections 2440-2448, Title 13, California Code of Regulations (CCR), to California's Office of Administrative Law (OAL) for review. On December 8, 1999, the OAL approved all regulatory sections submitted with the exception of section 2443.3, which it disapproved. Section 2443.3 requires that at point of sale each marine engine display a "hang tag" with facsimiles of the three environmental labels specified in the approved and effective section 2443.2.

In its December 15, 1999, notice, the OAL gave two principal reasons for disapproving section 2443.3, based on clarity problems with subsection (b)(2). First, the OAL found the period of applicability unclear. Subsection (a) had identified the hang tag requirements to apply beginning in model year 2001, while (b)(2) had stated such requirements applied until that year. Second, the OAL found unclear the criteria that the Executive Officer would use to set a date, other than the specified (and unclear) 2001 model year, as the date by which the two-label facsimile option could expire.

In response to the OAL's concerns, the ARB proposed further modifications, and by a notice released December 22, 1999, made them available for a public comment period ending January 17, 2000. The ARB received two comment letters specifically addressing the proposed modifications. In response, the ARB made what it considered to be nonsubstantive changes to the section before readopting it by Executive Order G-00-003 on February 17, 2000, and resubmitting it to the OAL on February 18, 2000.

On April 3, 2000, the OAL rejected the section as resubmitted. The OAL was principally concerned with the provision for expiration of the two-tier labeling provision. The OAL stated that while the ARB had responded to the commenters' suggestion that the expiration of the two-tier hang tag option occur in the model year after either an outboard or personal watercraft engine, respectively, certifies to the 2008 (Tier III) exhaust emission standard, that modified expiration had not been subject to public comment. The OAL also requested the ARB to correct minor defects including two typographical errors.

II. Additional Modifications

To address OAL's concerns, staff proposed additional clarifying modifications to the regulatory text consistent with the Board's intent in approving the regulations. In proposing the modifications, the ARB agreed with manufacturers' suggestions that they should lose their two-tier labeling option not on "the date" that the ARB certifies an engine family to the Tier III standards, but rather in "the first model year after" that date. Throughout the marine engine regulations, manufacturers' duties are triggered by the model year for which they are producing engine families. The exempted manufacturers' new obligations -- to provide hang tag facsimiles and owners' manual sections depicting all three labels with their certification applications -- apply in a given model year. Manufacturers will need until the next model year to adjust their certification applications to switch from the optional two-tier facsimile hang tag option to the mandatory three-tier facsimile.

Initial in-house versions of the modified text also fully corrected the two typographical errors that the OAL identified in section 2443.3(b). However, it appears that in later iterations exchanged between staff, the word processing program again returned two incorrect characters -- "I" rather than the intended "i" -- to the proposed modified text of subsections 2443.3(b)(2) and (b)(3). Though these were not caught in time for the noticed version, the ARB does not believe these errors could have caused any confusion for the following reasons.

The subject subsection referenced within 2443.3(b)(2) and (b)(3), section 2443.2(c)(1)(B), has no (I) subsection with which the intended subsection cite, 2443.2(c)(1)(B)(i), could be confused. In addition, it was abundantly clear from the January 17, 2000 and April 12, 2000 mail-outs that neither the content nor the location of label facsimiles, section 2443.2(c)(1)(B), was at issue. Rather, at issue was the duration of manufacturers' option to show on the hang tag only two of the three facsimiles shown in 2443.2(c)(1)(B). Read in context with the purpose of the option -- to avoid having to show on the hang tag the third (Tier III) facsimile described in 2443.2(c)(1)(B)(iii) and otherwise required by 2443.3(b)(1) -- the typographic errors could not have caused any confusion. Clearly only the Tier I and Tier II labels shown in the 2443.3(b) graphic and referenced in 2443.3(b)(1) would be required on the hang tag until the conditions in (A) or (B) of 2443.3(b)(2) and (b)(3) were met. Despite repeated mailings of the proposed text of section 2443.3 to over a thousand people, no one in this or prior comment periods identified these typographical errors for clarification or correction.

The ARB routinely files such changes with the OAL as Section 100 or "nonsubstantive" changes to correct minor numbering and other typographical errors that occur in reformatting, renumbering, and cross-referencing regulatory text during a rulemaking. Accordingly, while the proposed and noticed modified text corrected only the prior omission of the parentheses in subsections 2443.3(b)(2) and (b)(3), the ARB made two nonsubstantive changes - returning the "I" to an "i" - in those same subsections prior to readopting section 2443.3.

No comments were received, and the modifications were made final by readopting a third and final version of section 2443.3 by Executive Order G-00-028.

III. Correction of Minor Defects

In its April 3, 2000 notice, the OAL stated that the Form 400 transmitting the resubmittal of section 2443.3 had the incorrect beginning date, December 2, 1999, for the public comment period specified in item (B)(3). The ARB corrected this to December 22, 1999 for the rulemaking file.

IV. Conclusion

The ARB believes that the text has been sufficiently clarified, consistent with the Board's directives at the hearing, to specify both an endpoint (2004) and the earliest model year affected (that following the date the first engine certifies to the 2008 exhaust emission standards) such that affected manufacturers can now determine the conditions affecting the expiration of the two-tier hang tag option.